IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE MR. JUSTICE T.CH.SURYA RAO

W.A. No.1042 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 04-03-2004 in W.P. No.3480 of 2004 on the file of the High Court.)

Between:

Sri Ch. Venugopal, S/o. Ch. Ramalingam,
H.No. 1-14-19, Koratipadu, Guntur. **..... APPELLANT**

AND

1. J. Srirama Murthy,

Plot No. 5-4, Srinivasa Apartments,
Behind State Bank of India,

Seetammadhara Junction, Viskhapatnam-13.

2. The Secretary,

NGO's Co-operative House & Building Societies,

No.B-1152, Akkayapalem, Visakhapatnam-16.

3. The Deputy Registrar of Co-operative Societies,

Visakhapatnam, Visakhapatnam District.

4. The A.P. Co-operative Tribunal, Vijayawada,

Rep by its Secretary, Yalamachali Complex,

Elore Road, Vijayawada. **.....RESPONDENT(S)**

Counsel for the Appellant: Mr. P. Srinivas, Advocate,
for Mr. P.M. Gopal Rao, Senior Advocate.

Counsel for Respondent No.1: Mr. Ravindra Babu, Adv.

Counsel for Respondent No.2: Mr. J.U.M.V. Prasad, Adv.

Counsel for Respondent Nos.3 & 4: G.P. FOR CO-OPERATION

The Court made the following :

JUDGMENT: (Per Hon'ble Sri Justice B. Sudershan Reddy)

The unsuccessful writ petitioner is the appellant in this Writ Appeal.

The 1st respondent filed arbitration case against the appellant and the 2nd respondent-N.G.O's. Co-operative House & Building Societies (for short 'the Society') seeking declaration of title and perpetual injunction restraining the appellant herein from making constructions in Plot No.255 situated in Survey No.13 (Part) and 14 of Kapparada village, Visakhapatnam District (hereinafter referred to as "the scheduled property"). The case set up by him before the Arbitrator was that he is one of the members of the Society and was allotted Plot No.26 and that he entered into an agreement with M. Nagabhushana Rao and accordingly exchanged the said plot with Plot No.77. That he again exchanged the said plot with one Veerabhadra Rao and got Plot No.255, which was allotted to the said Veerabhadra Rao. The Society recognized the said exchange on 16-03-1996. That he gave a complaint to the Society about the illegal acts of construction of compound wall by the appellant.

The case of the appellant was that his father was allotted Plot No.255 (scheduled property) and he paid the required amounts in the year 1985 itself

and the Society delivered the possession of the said plot in the year 1985 itself to his father. That he filed an application for construction of house in Plot No.255 vide letter, dated
22-12-1998, to which the Society addressed a letter, dated 10-01-1999, requiring him to furnish the relevant documents and the same were furnished to it. The Society did not raise any obstruction whatsoever in making the construction. No objections were raised by the Society and as well as the
1st respondent at the time when the constructions were made. The Society filed its counter denying the allegations and averments made by the 1st respondent in the arbitration case. It is further admitted that the father of the appellant
Ch. Ramalingam was allotted Plot No.255 admeasuring
311 Square yards (scheduled property) and paid the amounts in the year 1962 and remaining amounts in the year 1985 in response to the letter issued by the Society, dated
14-04-1985. It is stated in clear and categorical terms that Plot No.255 in respect of which the 1st respondent asserted his title was allotted to the appellant's father
Ch. Ramalingam. It was further stated that the exchange of plots between the 1st respondent and Nagabhushana Rao were not brought to the notice of the Society and the said exchange was not recognized by the Society. It is even admitted that the appellant constructed the house and the Municipal authorities have levied the house tax and assessed the house and accordingly issued demand notices requiring the appellant to pay the property tax.

However, the Society filed another counter styling it as "Reply counter to the counter filed by Sri. Ch. Venugopal son of late Ch. Ramalingam, Respondent-II" *inter alia* stating that Plot No.255 is vacant and the payment of advance amount

towards the scheduled property during 1962 is not correct but an amount of Rs.1,125/- and Rs.5,000/- was paid on
08-10-1967 and 22-08-1994, respectively, by late
Ch. Ramalingam. The tentative site value was not paid fully till date.

The Tribunal relying upon Ex.P-2 letter addressed by the Society to the 1st respondent and Veerabhadra Rao, dated 16-03-1996, found that mutual exchange was with consent and approval of the Society. It was held that the
1st respondent has been in peaceful possession and enjoyment of the scheduled property. The Tribunal brushed aside the averments made in the counter affidavit filed by the Society that the then Secretary one G. Apparao Reddy committed several irregularities and the approval stated to have been granted by the Society is a fabricated one. The Tribunal further held that the irregularities, if any, committed by the then Secretary is of no consequence and the
1st respondent cannot be held responsible for the same.

The appellant herein filed appeal before the
A.P. Co-operative Tribunal, Vijayawada, challenging the correctness of the award passed by the Arbitrator. The Appellate Tribunal found that the appellant herein did not produce any original allotment letter and even going by the ledger records, the appellant has paid only part payment in respect of the scheduled property whereas the
1st respondent paid the entire amount and the Society accepted the exchange of his site with the site of Veerabhadra Rao and allotted the same to the 1st respondent. The Tribunal accordingly dismissed the appeal preferred by the appellant and the writ petition filed by the appellant challenging the orders

passed by the Tribunals below also met the same fate.

The question that falls for consideration is whether the orders passed by the Tribunals which were confirmed by the learned single Judge suffer from any error apparent on the face of the record ?

Sri P. Srinivas, learned counsel for the appellant, submitted that the 1st respondent invoked the jurisdiction of the Arbitrator under Section 61 of the A.P. Co-operative Societies Act, 1964 (for short 'the Act') did not make out any case whatsoever establishing his title in respect of the scheduled property. The burden is on the 1st respondent to establish that there was a valid exchange between himself and Nagabhushana Rao as pleaded by him in which he got Plot No.77 in lieu of Plot No.26 allotted to him by the Society. Likewise the burden is on the 1st respondent to establish that there was a further exchange between himself and Veerabhadra Rao in which he got the scheduled property. There is nothing on record evidencing the allotment of Plot No.77 in favour of Nagabhushana Rao and Plot No.255 in favour of Veerabhadra Rao. No evidence has been made available by the 1st respondent in this regard. The findings recorded by the Tribunals below are not based on any evidence. The Tribunal below misdirected themselves to the real and substantial question that had fallen for consideration and committed an error in placing the burden on the appellant.

Learned counsel for the 1st respondent contended that both the Tribunals concurrently found that the appellant herein has no title to the scheduled property and such concurrent finding of facts cannot be interfered with by this

Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The learned single Judge rightly did not interfere with the concurrent finding of facts and no interference is called for.

It is very well settled and needs no restatement at our hands that this Court while exercising its *Certiorari* jurisdiction cannot reappreciate the evidence available on record and substitute its own findings for that of Tribunals below. Such a course is impermissible. Writ of *Certiorari* lies to correct the manifest errors, if any, committed by the Tribunals in exercise of their jurisdiction. Misdirection in considering the substantial issues that fallen for consideration before the Tribunals, amounts to errors apparent on the face of the record and can always be corrected by this Court in exercise of its *Certiorari* jurisdiction. We shall bear this in mind and proceed to consider the case on hand.

The 1st respondent in clear and categorical terms pleaded that one M. Nagabhushana Rao was allotted
Plot No.77 by the Society and he entered into an agreement with the said Nagabhushana Rao and got Plot No.77 in exchange of Plot No.26 allotted to him. There is no evidence that Nagabhushana Rao was allotted Plot No.77, which could have been exchanged with Plot No.26 stated to have been allotted to the 1st respondent. Likewise, there is no evidence that one Veerabhadra Rao was allotted Plot No.255 and the said Veerabhadra Rao exchanged Plot No.255 allotted to him with Plot No.77, which the 1st respondent got in exchange with Nagabhushana Rao. It is the primary duty of the
1st respondent to establish that Plot No.77 was initially allotted to Nagabhushana Rao and Plot No.255 was allotted to Veerabhadra Rao,

respectively. The plea of exchange set up by the 1st respondent has to fail if these facts are not established. This aspect of the matter has been totally ignored by the Tribunals below. The 1st respondent is required to establish three vital facts viz., (a) that the society has allotted Plot No.26 to him and he paid the entire amount liable to be paid to the society; (b) that Plot No.77 has been validly allotted in favour of Nagabhushana Rao and he paid the amounts payable to the society as is required; and (c) that Plot No.255 has been validly allotted in favour of Veerabhadra Rao and he paid the amount payable to the society in respect of the same. The 1st respondent cannot succeed unless these facts are established. This aspect of the matter has been totally ignored by the Tribunals below. The findings recorded by the Tribunals below as to the exchange of plots by the 1st respondent are based on no evidence, and therefore, the findings are perverse in their nature. A finding based on no evidence is a perverse finding.

The Tribunals below misdirected themselves in casting burden upon the appellant herein to prove that the scheduled property plot was allotted to his father. Admittedly, the scheduled property was not allotted to the 1st respondent and he claims to have secured the same in exchange with the plots allotted to other members. The Tribunal ought to have considered whether those plots were at all allotted to those individual members from whom the 1st respondent is stated to have secured the scheduled property in exchange with the plot allotted to him. The Tribunal instead of framing the correct question for its consideration committed an error, which is apparent on the face of the record, in casting burden upon the appellant herein to establish his title to the scheduled property. The Society did not raise any dispute as against the

appellant herein and it is the 1st respondent who raised the dispute asserting his right, title and interest in the scheduled property and it is for him to establish as to how he secured the scheduled property for which purposes he has to establish the allotment of plots in favour of those individuals with whom he is stated to have entered into an agreement and exchanged the plot allotted to him with those plots. It is also required to notice that the 1st respondent herein did not implead Veerabhadra Rao and Nagabhushana Rao with whom he claims stated to have entered into an agreement for mutual exchange of plots allotted to them. These vital aspects have been ignored by the Tribunals below, which resulted in passing of erroneous orders.

Learned counsel for the 1st respondent, however, made an attempt to file some documents in order to substantiate that Nagabhushana Rao and Veerabhadra Rao were allotted plots by the Society and they have entered into a mutual agreement with the 1st respondent for exchanging the plots. These documents are not, admittedly, filed before the Arbitrator or the appellate authority. We cannot receive those documents and examine their genuineness in this summary proceedings.

The Tribunals below have also failed to advert themselves as to the effect of inconsistent and contradictory statements taken by the Society in its counter and in the additional counter. This is also a notable aspect that escaped the attention of the Tribunals below.

For the aforesaid reasons, we hold that the orders passed by the Tribunals below are vitiated by apparent errors on the face of the record

requiring the interference of this Court and correction in exercise of its *Certiorari* jurisdiction. The matter is accordingly remitted for fresh consideration by the Arbitrator, in accordance with law, for which purposes he shall provide further opportunity to the parties to lead evidence in support of their case. It shall be open to the

1st respondent to file the documents that were sought to be filed before us, which shall be received by the Arbitrator for consideration. The Arbitrator shall dispose of the matter on merits, in accordance with law, uninfluenced by the observations made by the Co-operative Tribunal and the learned single Judge while disposing of the writ petition. The arbitration case shall be disposed of within six months from the date of receipt of copy of the order.

The impugned order under appeal is accordingly set aside. The Writ Appeal is allowed without any order as to costs.

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B. SUDERSHAN REDDY, J

Date:_____ Dec., 2004.

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T. CH. SURYA RAO, J

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To

1. The Deputy Registrar of Co-operative Societies,

Visakhapatnam, Visakhapatnam District.

2. The A.P. Co-operative Tribunal, Vijayawada,

Rep by its Secretary, Yalamachali Complex,

Elore Road, Vijayawada.

3. Two C.Cs. to G.P. for Co-operation, High Court of A.P.,

Hyderabad (O.U.T.)

4. Two C.D. copies.